

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY DWAYNE WINSTON,

Defendant-Appellant.

UNPUBLISHED

February 16, 1999

No. 203916

Saginaw Circuit Court

LC No. 96-012721 FH

Before: Markman, P.J., and Bandstra and J.F. Kowalski*, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction after a jury trial of operating a motor vehicle with a suspended license, MCL 257.904; MSA 9.2604; possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v); and unlawful use of a vehicle registration, MCL 257.256; MSA 9.1956. Defendant was sentenced as a habitual offender, fourth offense, MCL 769.12; MSA 28.1084. We affirm.

Defendant is an African-American male. The jury venire included two persons of his race. One of these potential jurors was excused by stipulation of both parties. The prosecutor exercised a peremptory challenge to excuse the other. Defendant objected to this action, and the prosecutor stated that he dismissed the potential juror not because of her race, but because of his discomfort when the person failed to make eye contact with him when he asked her questions. The trial court found that defendant failed to make a prima facie case of improper discrimination under *Batson v Kentucky*, 476 US 79; 106 S Ct 1712; 90 L Ed 2d 69 (1986). The court further found that the prosecutor presented a race-neutral basis for his action, and it rejected defendant's challenge.

In raising a challenge under *Batson, supra*, defendant has the burden of establishing a prima facie case of purposeful discrimination on the part of the prosecutor. *People v Barker*, 179 Mich App 702, 705; 446 NW2d 549 (1989), aff'd 437 Mich 161; 468 NW2d 492 (1991). To establish a prima facie case, defendant must show that the facts and circumstances raise an inference that the prosecutor used peremptory challenges to exclude a person from the venire because of her race. *Id.* The court

* Circuit judge, sitting on the Court of Appeals by assignment.

must consider the totality of the circumstances, including whether there is a pattern of strikes, and whether the questions and answers of the prosecutor give rise to an inference of discriminatory purpose. *Id.* If the defendant makes a prima facie case, the burden shifts to the prosecutor to come forward with a race-neutral reason for his action. *Id.*, 706. The prosecutor need only articulate a neutral reason for his action to counter a defendant's prima facie case. *Purkett v Elem*, 514 US 765; 115 S Ct 1769; 131 L Ed 2d 834 (1995). Unless a discriminatory intent is inherent in the reason offered, the reason will be deemed race neutral. *Id.*

The trial court did not abuse its discretion in rejecting defendant's challenge. *Clarke v K Mart Corp*, 220 Mich App 381, 384; 559 NW2d 377 (1996). Defendant failed to establish a prima facie case, and the prosecutor also offered a race-neutral reason for his decision.

Affirmed.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski